

AMENDED IN ASSEMBLY AUGUST 24, 2006

AMENDED IN ASSEMBLY JULY 11, 2005

AMENDED IN SENATE MAY 10, 2005

AMENDED IN SENATE APRIL 4, 2005

## SENATE BILL

**No. 815**

---

---

**Introduced by Senator ~~Ortiz~~ Perata**

February 22, 2005

---

---

~~An act to amend Section 415.50 of the Code of Civil Procedure, relating to service by publication.~~ *An act to amend Section 4658 of the Labor Code, relating to workers' compensation.*

### LEGISLATIVE COUNSEL'S DIGEST

SB 815, as amended, ~~Ortiz Perata~~. ~~Civil procedure: service by publication.~~ *Workers' compensation: permanent disability: schedule.*

*Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Existing law requires the payment of disability benefits to eligible individuals for injuries sustained in the course of employment that cause permanent disability, and specifies that the amount of those payments be computed in accordance with a prescribed formula.*

*This bill would revise the formula for computing those payments for injuries causing permanent disability, which occur on or after January 1, 2007, as specified.*

~~Existing law provides for the service of a summons by publication under specified circumstances. Notwithstanding an order for publication of the summons, a summons may be served in another~~

~~authorized manner, in which event the service shall supersede any published summons.~~

~~This bill would provide that a summons may be served by substitute service on a defendant's insurance company if upon affidavit it appears to the court's satisfaction that the insured defendant cannot with reasonable diligence be served in another manner, other specified conditions are satisfied, and the insurer has acknowledged the claim and has not denied coverage on the loss. The bill would provide that a plaintiff who elects to serve the defendant's insurer as a substitute for service by publication thereby waives any claim above the policy limits of the insured defendant.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. *The Legislature finds and declares all of the*  
2     *following:*  
3     (a) *In enacting Assembly Bill 227 (Chapter 635, Statutes of*  
4     *2003), Senate Bill 228 (Chapter 639, Statutes of 2003), and*  
5     *Senate Bill 899 (Chapter 34, Statutes of 2004), it was the intent*  
6     *of the Legislature to create a workers' compensation system that*  
7     *is fair to all parties involved.*  
8     (b) *Ensuring that permanently disabled workers receive fair*  
9     *compensation is a high priority of the Legislature.*  
10    (c) *Until we know the full effect workers' compensation reform*  
11    *has had on the workers' compensation system in general, and*  
12    *permanently disabled workers in particular, we should ensure*  
13    *that permanently disabled workers receive adequate benefits.*  
14    (d) *In ensuring adequate benefit levels to permanently*  
15    *disabled workers, it is not the intent of the Legislature to*  
16    *undermine the positive effect workers' compensation reform has*  
17    *had on California's employers and workers.*  
18    SEC. 2. *Section 4658 of the Labor Code is amended to read:*  
19    4658. (a) *For injuries occurring prior to January 1, 1992, if*  
20    *the injury causes permanent disability, the percentage of*  
21    *disability to total disability shall be determined, and the disability*  
22    *payment computed and allowed, according to paragraph (1).*  
23    *However, in no event shall the disability payment allowed be less*  
24    *than the disability payment computed according to paragraph (2).*

(1)

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
Under 10.....	3
10–19.75.....	4
20–29.75.....	5
30–49.75.....	6
50–69.75.....	7
70–99.75.....	8

The number of weeks for which payments shall be allowed set forth in column 2 above based upon the percentage of permanent disability set forth in column 1 above shall be cumulative, and the number of benefit weeks shall increase with the severity of the disability. The following schedule is illustrative of the computation of the number of benefit weeks:

Column 1— Percentage of permanent disability incurred:	Column 2— Cumulative number of benefit weeks:
5.....	15.00
10.....	30.25
15.....	50.25
20.....	70.50
25.....	95.50
30.....	120.75
35.....	150.75
40.....	180.75
45.....	210.75
50.....	241.00
55.....	276.00
60.....	311.00
65.....	346.00

1	70.....	381.25
2	75.....	421.25
3	80.....	461.25
4	85.....	501.25
5	90.....	541.25
6	95.....	581.25
7	100.....	for life

(2) Two-thirds of the average weekly earnings for four weeks for each 1 percent of disability, where, for the purposes of this subdivision, the average weekly earnings shall be taken at not more than seventy-eight dollars and seventy-five cents (\$78.75).

(b) This subdivision shall apply to injuries occurring on or after January 1, 1992. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed, according to paragraph (1). However, in no event shall the disability payment allowed be less than the disability payment computed according to paragraph (2).

(1)

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
Under 10.....	3
10–19.75.....	4
20–24.75.....	5
25–29.75.....	6
30–49.75.....	7
50–69.75.....	8
70–99.75.....	9

The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above and shall be cumulative, and shall increase with the severity of the disability in the manner illustrated in subdivision (a).

(2) Two-thirds of the average weekly earnings for four weeks for each 1 percent of disability, where, for the purposes of this subdivision, the average weekly earnings shall be taken at not more than seventy-eight dollars and seventy-five cents (\$78.75).

(c) This subdivision shall apply to injuries occurring on or after January 1, 2004. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed as follows:

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
Under 10.....	4
10–19.75.....	5
20–24.75.....	5
25–29.75.....	6
30–49.75.....	7
50–69.75.....	8
70–99.75.....	9

The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above and shall be cumulative, and shall increase with the severity of the disability in the manner illustrated in subdivision (a).

(d) (1) This subdivision shall apply to injuries occurring on or after the effective date of the revised permanent disability schedule adopted by the administrative director pursuant to Section 4660. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the basic disability payment computed as follows:

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
---	---

1	0.25–9.75.....	3
2	10–14.75.....	4
3	15–24.75.....	5
4	25–29.75.....	6
5	30–49.75.....	7
6	50–69.75.....	8
7	70–99.75.....	16

8

9 The numbers set forth in column 2 above are based upon the  
 10 percentage of permanent disability set forth in column 1 above  
 11 and shall be cumulative, and shall increase with the severity of  
 12 the disability in the manner illustrated in subdivision (a).

13 (2) If, within 60 days of a disability becoming permanent and  
 14 stationary, an employer does not offer the injured employee  
 15 regular work, modified work, or alternative work, in the form and  
 16 manner prescribed by the administrative director, for a period of  
 17 at least 12 months, each disability payment remaining to be paid  
 18 to the injured employee from the date of the end of the 60-day  
 19 period shall be paid in accordance with paragraph (1) and  
 20 increased by 15 percent. This paragraph shall not apply to an  
 21 employer that employs fewer than 50 employees.

22 (3) (A) If, within 60 days of a disability becoming permanent  
 23 and stationary, an employer offers the injured employee regular  
 24 work, modified work, or alternative work, in the form and  
 25 manner prescribed by the administrative director, for a period of  
 26 at least 12 months, and regardless of whether the injured  
 27 employee accepts or rejects the offer, each disability payment  
 28 remaining to be paid to the injured employee from the date the  
 29 offer was made shall be paid in accordance with paragraph (1)  
 30 and decreased by 15 percent.

31 (B) If the regular work, modified work, or alternative work is  
 32 terminated by the employer before the end of the period for  
 33 which disability payments are due the injured employee, the  
 34 amount of each of the remaining disability payments shall be  
 35 paid in accordance with paragraph (1) and increased by 15  
 36 percent. An employee who voluntarily terminates employment  
 37 shall not be eligible for payment under this subparagraph. This  
 38 paragraph shall not apply to an employer that employs fewer than  
 39 50 employees.

(4) For compensable claims arising before April 30, 2004, the schedule provided in this subdivision shall not apply to the determination of permanent disabilities when there has been either a comprehensive medical-legal report or a report by a treating physician, indicating the existence of permanent disability, or when the employer is required to provide the notice required by Section 4061 to the injured worker.

*(e) This subdivision shall apply to injuries occurring on or after January 1, 2007. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed as follows:*

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
0–9.75.....	4
10–14.75.....	5
15–24.75.....	7
25–29.75.....	8
30–49.75.....	9
50–69.75.....	11
70–99.75.....	21

*The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above and shall be cumulative, and shall increase with the severity of the disability in the manner illustrated in subdivision (a).*

*(f) This subdivision shall apply to injuries occurring on or after January 1, 2008. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed as follows:*

1		Column 2—Number of weeks
2		for which two-thirds of
3	Column 1—Range	average weekly earnings
4	of percentage	allowed for each 1 percent
5	of permanent	of permanent disability
6	disability incurred:	within percentage range:
7	0–9.75.....	5
8	10–14.75.....	7
9	15–24.75.....	8
10	25–29.75.....	10
11	30–49.75.....	12
12	50–69.75.....	13
13	70–99.75.....	27

14  
 15 *The numbers set forth in column 2 above are based upon the*  
 16 *percentage of permanent disability set forth in column 1 above*  
 17 *and shall be cumulative, and shall increase with the severity of*  
 18 *the disability in the manner illustrated in subdivision (a).*

19 *(g) This subdivision shall apply to injuries occurring on or*  
 20 *after January 1, 2009. If the injury causes permanent disability,*  
 21 *the percentage of disability to total disability shall be*  
 22 *determined, and the disability payment computed and allowed as*  
 23 *follows:*

24		
25		Column 2—Number of weeks
26		for which two-thirds of
27	Column 1—Range	average weekly earnings
28	of percentage	allowed for each 1 percent
29	of permanent	of permanent disability
30	disability incurred:	within percentage range:
31	0–9.75.....	6
32	10–14.75.....	8
33	15–24.75.....	10
34	25–29.75.....	12
35	30–49.75.....	14
36	50–69.75.....	16
37	70–99.75.....	32

38  
 39 *The numbers set forth in column 2 above are based upon the*  
 40 *percentage of permanent disability set forth in column 1 above*



1 *and shall be cumulative, and shall increase with the severity of*  
2 *the disability in the manner illustrated in subdivision (a).*

3 **SECTION 1.** ~~Section 415.50 of the Code of Civil Procedure~~  
4 ~~is amended to read:~~

5 ~~415.50. (a) A summons may be served by publication if upon~~  
6 ~~affidavit it appears to the satisfaction of the court in which the~~  
7 ~~action is pending that the party to be served cannot with~~  
8 ~~reasonable diligence be served in another manner specified in~~  
9 ~~this article and that either:~~

10 ~~(1) A cause of action exists against the party upon whom~~  
11 ~~service is to be made or he or she is a necessary or proper party~~  
12 ~~to the action.~~

13 ~~(2) The party to be served has or claims an interest in real or~~  
14 ~~personal property in this state that is subject to the jurisdiction of~~  
15 ~~the court or the relief demanded in the action consists wholly or~~  
16 ~~in part in excluding the party from any interest in the property.~~

17 ~~(b) The court shall order the summons to be published in a~~  
18 ~~named newspaper, published in this state, that is most likely to~~  
19 ~~give actual notice to the party to be served. If the party to be~~  
20 ~~served resides or is located out of this state, the court may also~~  
21 ~~order the summons to be published in a named newspaper~~  
22 ~~outside this state that is most likely to give actual notice to that~~  
23 ~~party. The order shall direct that a copy of the summons, the~~  
24 ~~complaint, and the order for publication be forthwith mailed to~~  
25 ~~the party if his or her address is ascertained before expiration of~~  
26 ~~the time prescribed for publication of the summons. Except as~~  
27 ~~otherwise provided by statute, the publication shall be made as~~  
28 ~~provided by Section 6064 of the Government Code unless the~~  
29 ~~court, in its discretion, orders publication for a longer period.~~

30 ~~(c) Service of a summons in this manner is deemed complete~~  
31 ~~as provided in Section 6064 of the Government Code.~~

32 ~~(d) Notwithstanding an order for publication of the summons,~~  
33 ~~a summons may be served in another manner authorized by this~~  
34 ~~chapter, in which event the service shall supersede any published~~  
35 ~~summons.~~

36 ~~(e) (1) A summons may be served by substitute service on a~~  
37 ~~defendant's insurance company if upon affidavit it appears to the~~  
38 ~~satisfaction of the court in which the action is pending that the~~  
39 ~~insured defendant cannot with reasonable diligence be served in~~

~~1 another manner specified in this article, other than service by  
2 publication under paragraph (a), and that either:~~

~~3 (A) A cause of action exists against the insured defendant or  
4 he or she is a necessary or proper party to the action.~~

~~5 (B) The insured defendant has or claims an interest in real or  
6 personal property in this state that is subject to the jurisdiction of  
7 the court or the relief demanded in the action consists wholly or  
8 in part in excluding the insured defendant from any interest in the  
9 property.~~

~~10 (2) If the requirements of paragraph (1) are satisfied, a  
11 plaintiff may elect to serve the defendant's insurance company if  
12 the insurer has acknowledged the claim and has not denied  
13 coverage on the loss. A copy of the summons and complaint may  
14 be served by a substituted service of process upon the  
15 defendant's insurer with the agent for process designated by the  
16 insurer with the Secretary of State, as provided in subdivision (b)  
17 of Section 1502 of the Corporations Code. Substitute service of  
18 process shall be effected by delivering a copy of the summons  
19 and the complaint to the person who is apparently in charge of  
20 the office, during the usual hours of business, or by mailing a  
21 copy of the summons and the complaint by registered mail,  
22 return receipt requested, addressed to the person to be served at  
23 the address of the insurer where a copy of the summons could  
24 have been delivered. The answer shall be filed in accordance  
25 with Section 68616 of the Government Code.~~

~~26 (3) A plaintiff who elects to serve the defendant's insurer  
27 pursuant to paragraphs (1) and (2) as a substitute for service by  
28 publication thereby waives any claim above the policy limits of  
29 the insured defendant. However, the plaintiff's election to limit  
30 his or her claim to policy limits shall be deemed null, and the  
31 plaintiff's demand shall no longer be limited to the policy limits,  
32 if either of the following occur:~~

~~33 (A) The insured defendant participates in discovery after  
34 commencement of the action.~~

~~35 (B) The complaint is later personally served on the insured  
36 defendant no later than 30 days before trial.~~

~~37 (4) Nothing in this subdivision shall affect any policy defenses  
38 that may exist as between the insured and the insurer.~~

~~39 (f) As a condition of establishing that the party to be served  
40 cannot with reasonable diligence be served in another manner~~

1 ~~specified in this article, the court may not require that a search be~~  
2 ~~conducted of public databases where access by a registered~~  
3 ~~process server to residential addresses is prohibited by law or by~~  
4 ~~published policy of the agency providing the database, including,~~  
5 ~~but not limited to, voter registration rolls and records of the~~  
6 ~~Department of Motor Vehicles.~~

O